

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, Wisconsin

CARGILL MEAT SOLUTIONS CORPORATION

Employer

and

Case 30-RC-6773

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION NO. 494**

Petitioner

DECISION AND DIRECTION OF ELECTION¹

I. SUMMARY

The issue presented in this case is whether the petitioned-for unit of maintenance employees should include the following four positions: janitor, warehouse worker, maintenance scheduler, and maintenance clerk. The Employer maintains these four positions should be included because they functionally share a community of interest with the maintenance employees in the unit. The Petitioner maintains these four positions should be excluded from the unit because they do not share a sufficient community of interest with the maintenance employees in the unit. The Petitioner also asserts the maintenance scheduler and maintenance

¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Timely briefs from the Employer and Petitioner have been received and considered and upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction. The parties stipulated, and I find, that the Employer is a corporation engaged in the processing and distribution of meat, and during the past calendar year, a representative period, the Employer sold and shipped goods and materials valued in excess of \$50,000 directly to customers located outside the State of Wisconsin.
3. The parties stipulated, and I find, Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

clerk should be excluded from the unit because they are office clerical employees. Based on the record and relevant law, I find that the four disputed positions should not be included in the unit, as none of these positions shares a sufficient community of interest with the maintenance employees to require their inclusion in the unit. Because I find that the maintenance scheduler and clerk have an insufficient community of interest with the maintenance employees, I do not reach the Petitioner's argument that these two positions are office clerical positions. Consequently, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time electrical and mechanical maintenance employees and waste water operators and technicians working at 200 Emmber Lane, Milwaukee, Wisconsin, and all out buildings; excluding all food processing employees, janitors, warehouse employees, maintenance scheduler, maintenance clerk, clerical employees, guards, and supervisors as defined by the Act.

With this finding, I also direct that an election in this unit take place.

II. BACKGROUND

A. Overview of the Employer's Operation

The Employer operates a meat processing facility which is comprised of several buildings located at 200 South Emmber Lane and 1915 Canal Street in Milwaukee, Wisconsin. These two locations are approximately a block apart. The facility collectively is known as the "downtown facility."² The 1915 Canal Street location contains the Employer's Freshmeat Facility in which "harvesting" activities take place. Live cattle are brought into the facility, slaughtered, and broken down into carcasses and various cuts of meat and trimmings. The 200 South Emmber location contains seven buildings: the East Plant (or "Grinding Plant") which produces ground beef and hamburger products; the West Plant, which is no longer in operation, but has some

² The Employer also has a facility in the Milwaukee suburb of Butler, Wisconsin, which is not involved in this proceeding.

offices and training facilities; the Garage Building, which functions, inter alia, as a warehouse for parts and equipment used by maintenance employees; the Becker Building, which houses some equipment, packing materials and supplies, and chemicals; a truck wash building; a forklift shop, which has a mechanical work area; and the Hart-Bronse Building, which houses parts.

Approximately 925 total employees work at the downtown facility. Approximately 775 to 800 of these employees are production employees directly involved in the processing of meat. There are currently approximately 53 employees in the petitioned-for maintenance unit and 15 employees in the four disputed classifications.

B. The 2003 Petition and Decision and Direction of Election

In 2003, the Petitioner filed a petition seeking to represent electrical and mechanical maintenance employees at the Employer's³ facility. The Employer argued in the 2003 case that this unit was inappropriate and an appropriate unit must include both production and maintenance employees. The Employer also argued, in the alternative, that a smaller craft unit of the facilities' group employees and electricians would be appropriate. The Director found that the petitioned-for unit of maintenance employees was appropriate, as this unit constituted a distinct and cohesive grouping of employees who shared a community of interest. The Director further found that this shared community of interest outweighed any prior bargaining history that existed. Because the petitioned-for unit was an appropriate unit, the Director did not reach the Employer's alternative argument concerning a smaller craft unit. An election was directed and held on March 21, 2003, and a certification of results issued on March 31, 2003.

In the 2003 case, the petitioned-for maintenance department unit consisted of 30 mechanics, 9 electricians, 5 facilities' group employees, 2 lubricators, and a trainee. The four disputed positions in this case were not discussed in the 2003 Decision.

³ At this time, the Employer's legal name was Emmepak Foods Inc., a Division of Cargill Food Solutions Company.

C. Bargaining History Prior to 2003 and Since 2003

The parties stipulated at the hearing that the recital of bargaining history which appears at pages 3 to 4 of the 2003 Decision contains an accurate account of the Employer's bargaining history prior to 2003. In sum, the only period in which any employees at the Employer's facility were represented by a labor organization was the period from 1959 to 1976. During this time, Peck Meat Packing Company, a predecessor to the current Employer, was part of a multi-employer bargaining association with the Meat and Allied Foods Workers Local Union #248, AFL-CIO. Local #248 represented a unit of both production and maintenance employees at the Peck Meat Packing Company. In 1976, Local #248 was decertified. After 1976 and through the date of the 2003 Decision, the production and maintenance employees at the Employer's downtown facility were not represented by any labor organization.

The record does not contain any evidence or stipulations indicating that any employees at the Employer's downtown facility have been represented by a labor organization since 2003.

III. PETITIONED-FOR UNIT AND ISSUES

At the hearing, Petitioner amended the petition to describe the unit as follows: All full-time and part-time electrical and mechanical maintenance employees and waste water operators and technicians working at 200 Emmber Lane, Milwaukee, Wisconsin, and all out buildings; excluding all food processing employees, clerical employees, supervisors, and guards, as defined by the Act. The parties agree that the following positions should be included in the unit: maintenance mechanics, leads,⁴ electricians, refrigeration technicians, electronic and instrumentation technicians, waste water operators, and waste water technicians.⁵

⁴ The parties stipulated at the hearing that the maintenance leads are not supervisors under Section 2(11) of the Act.

⁵ Although the Employer indicated at the beginning of the hearing that it would only agree to an appropriate unit consisting of both these seven positions and the four disputed positions, the Employer has never challenged or voiced any objection to including any of these seven positions in the unit. In fact, at the end of the hearing the

The Employer does not dispute the basic appropriateness of the petitioned-for maintenance unit. However, the Employer argues that any unit of maintenance workers must include all employees who functionally share a community of interest with the maintenance employees, and consequently, the unit should also include the four disputed positions: janitor, warehouse worker, maintenance scheduler, and maintenance clerk. The Petitioner, on the other hand, maintains these four positions should be excluded from the unit because they do not share a sufficient community of interest with the maintenance employees in the unit. The Petitioner also asserts the maintenance scheduler and maintenance clerk should be excluded because they are office clerical employees.⁶

IV. FACTS

A. The Disputed Positions

1. Janitors

The Employer currently employs seven janitors at the downtown facility.⁷ Janitors work throughout the downtown facility. Some janitors are assigned to specific buildings and some move around between the two locations. The janitors clock in where they are working on a particular day. On a daily basis, the janitors clean offices, floors, windows, bathrooms, locker rooms, break rooms, and general welfare areas. They put up and repair soap dispensers and paper towel holders and change out garbage bags. They also perform work on the grounds

Employer's Counsel referred to these positions as "the seven jobs, which we have already stipulated to." As a convenient short hand, I will refer to these positions as the "undisputed positions" below.

⁶ At the hearing, Petitioner's Counsel also asserted the maintenance clerk should be excluded from the unit because he is a confidential employee, and the maintenance scheduler should be excluded from the unit because she is a confidential employee and because she is Section 2(11) supervisor. The Petitioner has not pursued these arguments in its Brief and has apparently abandoned them. In any event, there is no record evidence indicating that either position is a confidential position, and there is no record evidence that the maintenance scheduler possess any supervisory indicia under Section 2(11) of the Act.

⁷ This number is extracted from Employer Exhibit 2, which contains a listing compiled by David Stafford, the Employer's Human Resource Manager, of the names, classifications, and wage rates of all employees in the petitioned-for unit and the disputed classifications.

including mowing grass, weeding, and snow removal. One janitor in particular, Daryl Dobrzynski, normally performs the grass mowing and snow removal.

The janitors generally work eight-hour shifts, with staggered start times, on all three shifts. The janitors who are currently employed make between \$11.55 and \$14.60 an hour. However, there is only one janitor who is currently making \$14.60 an hour. The highest rate for the remaining current janitors is \$12.06 an hour. Human Resource Manager David Stafford testified that the starting wage for janitors is \$10.50 or \$10.55 an hour and that he estimated the maximum rate was 14 dollars an hour, but he was not certain. Stafford also testified that the qualifications expected for janitors are “minimal, that they be able to come to work every day and learn their job.”⁸

Janitors are administratively grouped under the Employer’s Tech Services Team. Stafford testified that in “common parlance” the Tech Services Team would also be known as “quality assurance.” The Tech Services Team is responsible for ensuring food safety, compliance with USDA regulations, compliance with customer specifications, and general housekeeping and sanitation. As for supervision, some of the day shift janitors report to Mark Gill, the Specifications Superintendent on the Tech Services Team. The second and third shift janitors report to sanitation supervisors Tara Johnson, Dennis Brodaczynski, and Dora Garcia. All three of these supervisors report to Gill. Stafford testified that janitors wear green or white hard hats.

There is no evidence that janitors ever fill in for employees in any of the undisputed positions or that employees in these seven positions fill in for janitors. Stafford testified, however, that one janitor in particular, Daryl Dobryznski, will perform “maintenance” work that

⁸ A job posting from 2008 lists the janitor job requirements as follows: “Must be self motivated, able to work in cold, warm, and wet environments. Must be able to work extra hours when needed.”

includes: installing toilet paper dispensers, paper towel dispensers, and hand sanitizers; changing light bulbs; mowing the lawn; snow blowing; and putting up signs.

2. Warehouse Employees

The Employer currently has six warehouse employees. Four of these employees work in the Garage Building and the other two work in a warehouse in the West Plant. The Garage Building warehouse employees hand out parts, tools, and equipment to maintenance employees. The parts handed out are parts the maintenance employees need to perform their jobs, including fittings, bearings, and belts. Employees in the Garage Building also hand out supplies for other departments including, hats, gloves, beard nets, and other items needed for production sanitation. Warehouse employees in the West Plant predominately distribute packing supplies, such as boxes, bags, and labels. Employees working in the Garage Building work 12-hour shifts and the parts room there is staffed 24/7. The Garage Building employees are the only employees at the Employer's facility who work 12-hour shifts. Stafford testified that employees in the West Plant are on a more 8-hour, 5-day a week schedule. Stafford further testified that sometime this summer, the Garage Building will be shut down and the parts room function will be moved to the West Plant. When the move takes place, neither the Garage warehouse employees' nor the West Plant warehouse employees' jobs will change significantly; these employees will just be working in the same building. Stafford also testified, though, that there is "the thought" that the employees will eventually cross train for relief and vacation, but he did not know of specific plans as to when this will be done.

The six current warehouse employees listed in Employer's Exhibit 2 make from \$13.22 to \$14.95 an hour. Stafford testified that the starting wage for warehouse employees was \$10.50 to \$10.55 an hour and that he was uncertain what the maximum amount was, but 14 to 15 dollars

an hour sounded fair. The job requirements for working in the parts room are relatively minimal and include the ability to speak, read, and write English, excellent communication skills, the ability to lift 50 pounds, dependability, computer literacy, the possession of elementary math skills, and a driver's license. Employee Nick Motto testified that he got his job in the tool room right out of high school.

Warehouse employees are administratively grouped under the Employer's Accounting Team. Both the employees working in the Garage Building and the employees working in the West Plant are supervised by Fred Frelka, the Employer's Senior Parts Buyer and Warehouse Supervisor. Warehouse employees wear white hard hats.

With one insignificant exception,⁹ there is no record of any job interchange between warehouse employees and employees in the undisputed positions in the maintenance department. The only contact between warehouse employees and maintenance employees takes place when a maintenance employee goes to the parts room in the Garage Building to get a part. Nick Motto, who worked in the parts room for over five years, testified that when a maintenance employee brought a work order for a part, the conversation he had with the maintenance employee lasted about two minutes. Motto further testified that the visits he received from maintenance employees would vary from four or five to twenty visits a day, and depended on the type of day the mechanics were having.

3. Maintenance Scheduler

The Employer has one maintenance scheduler,¹⁰ Tanya Ensign. The maintenance scheduler reports to, and is supervised by, the Employer's maintenance Planner, Chuck

⁹ Electrician Mark Johnson testified to one incident in which the second-shift maintenance lead filled in temporarily for a parts room employee who went home sick.

¹⁰ The maintenance scheduler is listed as "Maint Planner Asst" on Employer Exhibit 2.

Larmay,¹¹ and she assists the Planner in the scheduling of maintenance work. The Employer utilizes a maintenance scheduling and planning software system called “Maximo” for keeping track of all its maintenance work. As work orders are generated by Maximo, Ensign will take them and look at the total number of hours required to perform the job. She will also look at the availability of the various maintenance crews and shifts. She then assigns the work orders to a supervisor or crew, and the supervisor will assign the work to a specific mechanic or electrician. Her objective is to assign work orders to make sure the maintenance crews’ work days are filled up. The maintenance scheduler checks on the completion status of work orders during the weekend. Stafford testified that Larmay told him that Ensign will go out on weekends with a list of jobs that need to be done and check with the supervisor and the crew about the progress of the jobs.

The maintenance scheduler works in the maintenance office building that is attached to the West Plant. None of the seven undisputed positions in the maintenance department work in this office, unless they are repairing something. The maintenance supervisors also have offices in this office building. The maintenance scheduler is a non-exempt employee, who is paid on a salaried basis. The information in Employer’s Exhibit 2 indicates that she is paid on a salaried basis equivalent to \$21.00 an hour. The maintenance scheduler receives overtime when she works more than 40 hours. However, unlike hourly employees, the maintenance scheduler and the maintenance clerk do not receive time-and-a-half after working 10 hours in a day. The maintenance scheduler and the maintenance clerk are also on a different vacation accrual

¹¹ Larmay plans maintenance projects, coordinates with contractors and schedules their work, and runs the Maximo maintenance software system.

schedule than the hourly workers,¹² but otherwise their benefits are the same as the hourly employees. Ensign worked as the maintenance clerk prior to becoming the scheduler.

The maintenance scheduler, maintenance clerk, and the Planner are grouped administratively on the Employer's Maintenance Team. The Planner reports to Carmen Miller, the Employer's Maintenance Manager. The four superintendents, Todd Engleman, Matthew Jones, Kevin Spiegl, and Shaunell Morgan, who oversee the seven undisputed positions, also report to Miller.

There is no job interchange between the maintenance scheduler and the employees in the seven undisputed positions in the maintenance department. Stafford testified that in addition to going on the floor to obtain the completion status of work, Ensign will also come into contact with mechanics in the break room and in the normal course of her duties, without giving any more specifics. Stafford admitted on cross that in instances in which he has seen Ensign talking to a rank-and-file mechanic, he does not know what they are talking about, or whether the topic was work-related or social. Nick Motto, a maintenance mechanic, testified that he does not have regular contact with Ensign, but he might see her in passing throughout the work day. Motto also testified that he receives his work assignments from his leadperson.

4. Maintenance Clerk

The Employer has one maintenance clerk, Enrique Lomeli. The maintenance clerk, like the scheduler, is supervised by the Planner and works in the maintenance office attached to the West Plant. Stafford testified that the maintenance clerk works on the back end of the work order process. The clerk looks at work orders that have been turned back in and closes them out or forwards orders that need further work to the Planner or to the scheduler. Stafford testified

¹² The maintenance scheduler and clerk receive three weeks of vacation after 15 years, while the mechanics receive three weeks of vacation after only eight years.

that he believes the clerk works with the Maximo system. The clerk also maintains certificates of insurance for contractors used by the Employer and other contractor compliance documents. The maintenance clerk, like the maintenance scheduler, is paid on a non-exempt, salaried basis, which from Employer Exhibit 2, appears to be equivalent to \$14.52 an hour.

There is no job interchange between the maintenance clerk and the employees in the undisputed positions in the maintenance department. Stafford testified that the only interaction the maintenance clerk has with mechanics is when the mechanics turn in completed work orders to the clerk. Maintenance mechanic Nick Motto, however, testified that he has never met Lomeli.

B. Undisputed Positions

At the outset it should be noted that the seven undisputed positions are all administratively grouped under the Employer's Maintenance Team, although, as noted below, some positions have different immediate supervision. Stafford testified that he expects maintenance employees to have experience and training in their field and that maintenance positions have entry skill requirements, while most production positions do not. All the employees in the undisputed positions wear red hard hats. With regard to the red hard hats, during cross-examination, Stafford was asked the following by Petitioner's Counsel:

Q And what is the company's description for who gets a red hat?

A Basically employees that work under the maintenance division or maintenance department, mechanics, electricians, waste water.

Q So the company's position is that maintenance employees get a red hat, correct?

A Mmm-hmm, yes.

Employees in the undisputed positions will fill in for each other within their respective classifications, but not across classifications. Specific facts related to each position are as follows.

1. Electricians

The Employer currently has 10 electricians.¹³ The wage rates for these electricians range from \$19.50 to \$24.50 an hour. Stafford testified that the wage range generally for electricians was between 14 and 25 dollars an hour. A recent job posting for an electrician sought a candidate with four years of industrial electrical experience or a two-year degree in industrial electricity. Stafford testified that this experience requirement is typical for electrician positions with the Employer. Electricians are usually assigned to a specific location, and it appears that most of the electricians are assigned to either the Freshmeat Facility or the Grinding Plant. The electricians are immediately supervised by the maintenance shift supervisors, although the electricians are generally overseen by Electrical Superintendent Kevin Spiegl. Electricians work on all three shifts.

2. Electronic and Instrumentation Technicians

The record does not contain much specific information regarding the electronic and instrumentation technicians other than they are classified as “Electrician C”s for payroll purposes and they are supervised by the maintenance shift supervisors. Electrician C is the classification given by the Employer to all electricians. From the information in the Employer’s exhibit on schedules, Employer Exhibit 3, it appears that two of the Employer’s ten Electrician Cs may be electronic and instrumentation technicians.

3. Mechanics

The Employer currently has 15 employees who are classified as “mechanics” and 16 employees who are classified as “maintenance mechanics.”¹⁴ The wage range for the current employees classified as mechanics is from \$13.00 to \$21.73 an hour. There are only two

¹³ This is the number of employees in the “Electrician C” classification in Employer Exhibit 2. As discussed below, two of these electricians may be electronic and instrumentation technicians.

¹⁴ This information has been extrapolated from Employer Exhibit 2.

mechanics who make less than 16 dollars an hour. The wage range for the current maintenance mechanics is from \$14.00 to \$23.00 an hour. However, only two of these employees make \$14.00 an hour. The next lowest wage in this classification is \$17.50 an hour. Some of the mechanics are assigned to specific buildings, typically the Freshmeat Facility and the Grinding Plant, and some move about the downtown facility. The mechanics perform preventative maintenance work and also handle equipment breakdowns. With one exception discussed below, mechanics are directly supervised by the maintenance shift supervisors and are supervised overall by Maintenance Superintendent Matthew Jones. Mechanics work on all three shifts, with varying start times.

Two of the Employer's maintenance mechanics are assigned to work on the buildings and grounds. Only one of these employees, Seatiel Sanchez, was clearly identified on the record. Sanchez's wage rate is \$14.00 an hour. The record does not contain much detailed evidence as to what the two buildings and grounds employees do other than they hang signs, change lights, paint, fix doors, repair walls, repair fences and safety gates, and blow snow. Nick Motto testified generally that buildings and grounds maintenance mechanics do what the plant maintenance mechanics do not do: while the plant mechanics are primarily focused on equipment repair, the buildings and maintenance mechanics focus on general items around the whole campus. The two buildings and grounds maintenance mechanics report to Todd Engleman, the Employer's Utilities and Building and Grounds Superintendent.

4. Maintenance Leads

The Employer currently has four maintenance lead employees. These four employees make between \$22.00 and \$25.35 an hour. The leads assist the maintenance supervisors in getting tasks accomplished, and they oversee and direct the crews in the supervisors' absence.

5. Refrigeration Technicians

The Employer currently has five refrigeration technicians. These five employees make between \$17.05 and \$25.35 an hour. The refrigeration technicians move back and forth between the two downtown locations. They maintain the Employer's ammonia refrigeration system and work as back up boiler operators. They are directly supervised by Todd Engleman, the Utilities and Buildings and Grounds Superintendent. Employees working in this position are expected to have some refrigeration experience or knowledge, and those who operate the boilers must have a license. Refrigeration technicians work on all three shifts.

6. Waste Water Technician and Operators

The Employer currently has one waste water technician and two waste water operators. These employees operate and maintain the Employer's waste water system, which is located at the Freshmeat Facility. The person in the waste water technician position is slightly more advanced than the two operators in terms of his ability to maintain, repair, and operate the system. The supervisor for the waste water employees is Shaunell Morgan, the Employer's Environmental Superintendent. The waste water technician makes \$15.50 an hour, and the two operators make \$14.00 and \$14.50 an hour. Waste water operators are required to be able to follow directions, read and write English, have some mechanical ability, have excellent attendance, and no pending disciplinary actions at the time of application. There is a waste water technician or operator in each shift.

C. Miscellaneous

With the exception of the maintenance scheduler and clerk, all the disputed positions and the undisputed positions are paid on an hourly basis. With the exception of the vacation schedule for the maintenance scheduler and clerk, both the disputed and undisputed positions

have the same benefits. These benefits are described in an employee handbook which is distributed to all employees. All policies in the handbook, such as the drug and alcohol policy, apply to all the employees, as do all work rules. Managers and supervisors on an administrative team do not receive reports of discipline of employees on another administrative team. The Employer posts available positions, and any employee is able to bid on a posting. The Employer uses a grid to determine who should be awarded the position that takes into account seniority, work performance record, and job knowledge.

V. ANALYSIS

A. Legal Standard Generally

Resolution of unit composition issues begins with an examination of whether the petitioned-for unit is appropriate. *Overnight Transportation Co.*, 322 NLRB 723 (1996). If the petitioned-for unit is appropriate, then the inquiry into the appropriate unit ends. *Bartlett Collins Co.*, 334 NLRB 484 (2001). In making a determination as to whether a petitioned-for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioner be an appropriate unit for collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. *Overnight Transportation Co.*, 322 NLRB at 723 (citations omitted); *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) (“There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’”) (emphasis in the original). In evaluating the appropriateness of a petitioned-for unit, the Board relies on the community-of-interest standard. *Overnight Transportation Co.*, 322 NLRB at 724. The Board considers several factors in determining community of interest among employees including method of pay, hours of work, benefits,

commonality of supervision, qualifications, training and skills, common job functions, amount of time spent away from the plant situs, frequency of contact and interchange with other employees, functional integration, and bargaining history. *Id.*; *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1019 (1994). A petitioner's preference is always a relevant, but not a dispositive, consideration. *Marks Oxygen Co.*, 147 NLRB 228 (1964); *Airco, Inc.*, 273 NLRB 348 (1984). Where a petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, and may even select an appropriate unit that is different from the alternative proposals of the parties. *Boeing Co.*, 337 NLRB 152, 153 (2001); *Bartlett Collins Co.*, 334 NLRB at 484.

B. Legal Issue Presented and Analysis

The Board has a longstanding policy, as set forth in *American Cyanamid Co.*, 131 NLRB 909 (1961), of finding separate maintenance department units appropriate where the facts of the case demonstrate the absence of a more comprehensive bargaining history and the petitioned-for unit of maintenance employees have the requisite community of interest. See also *Capri Sun, Inc.*, 330 NLRB 1124 (2000). In this case, the Employer does not dispute the basic appropriateness of the petitioned-for maintenance unit, but argues that the unit must also include the four disputed job classifications. Consequently, whether the four disputed positions should be included in the unit turns on the application of the community-of-interest factors. As detailed below, an analysis of the community-of-interest factors with respect to the four disputed positions reveals that all four of these positions have an insufficient community of interest with the maintenance department employees to require their inclusion in the unit.

Janitors

When the community-of-interest factors are weighed with respect to the janitors, the janitors have an insufficient community of interest with the maintenance employees to require their inclusion in the unit. The janitors are grouped in a completely separate administrative department, which is responsible for quality assurance and sanitation. Consequently, the janitors' work function is focused on sanitation and hygiene, which is quite distinct from the maintenance employees' focus on equipment and building maintenance and repair. This difference in focus and function is also reflected by the fact that janitors wear green or white hard hats, instead of the red hard hats worn by employees in the maintenance department. The janitors have different supervisors than the maintenance employees, and the janitors' supervisors report to a completely different set of superintendents and managers. Further, there is a significant difference in skill level between janitors and the undisputed positions in the maintenance department. The janitors perform unskilled work, while the maintenance employees all perform tasks that require skill, training, or some experience. Moreover, there is significant difference in pay: the highest pay range for janitors is at the lowest end of the pay scale for most of the maintenance positions. The clear difference in skill level is also reflected by the fact that there is no job interchange between the janitors and maintenance employees—i.e. janitors do not fill in for maintenance mechanics and electricians and vice versa. I recognize that there is some record evidence that the two buildings and grounds maintenance mechanics sometimes perform tasks, such as hanging signs, changing light bulbs, and blowing snow, that are also performed by janitors. However, this minor overlap in tasks performed by two of the Employer's 53 maintenance employees is insufficient to create a community of interest. Likewise, the "maintenance" work the Employer states that janitors perform, such as changing light bulbs, installing toilet paper and paper towel dispensers, and mowing the lawn, is minor—

and arguably not even maintenance work at all—and insufficient to create a community of interest. Finally, there is virtually no contact between janitors and maintenance employees. As Nick Motto testified, he will see a janitor in the lunch room wiping down a table, but that is about it. In short, the above factors militate the exclusion of the janitors from the unit.¹⁵

Warehouse Workers

When the community-of-interest factors are weighed with respect to the warehouse workers, the warehouse workers have an insufficient community of interest with the maintenance employees to require their inclusion in the unit. The warehouse workers are grouped in a separate administrative department, which has a very distinct function, accounting, from the maintenance department. This functional difference is reflected by the fact that warehouse workers wear white hard hats, and not red maintenance department hard hats. The warehouse workers have different supervisors, who are in a separate chain of command from the supervisors in the maintenance department. There is also a significant difference in pay: the highest pay range for the warehouse employees is at the lowest end of the pay scale for most of the maintenance positions. The warehouse worker job is very distinct from a maintenance employee, as it is essentially clerical, not mechanical, in nature and has a very minimal skill set requirement. The warehouse workers in the Garage Building also work the unique 12-hour shifts which facilitates the parts room's 24/7 operation. The warehouse employees also work in a completely separate area and environment than the maintenance employees, and their contact with maintenance employees is limited to a couple of minutes' conversation when a mechanic

¹⁵ In its Brief, the Employer cites to *Harrah's Illinois Corporation*, 319 NLRB 749 (1995), and notes that in *Harrah's* the Board found the inclusion of heavy cleaners in a maintenance unit appropriate. I find *Harrah's* factually distinguishable. The maintenance employees in *Harrah's* worked predominantly on building, fixture, and grounds maintenance. The maintenance employees in this case primarily work on industrial equipment and machinery and, consequently, generally have a higher skill set. Further, in *Harrah's*, the maintenance employees and heavy cleaners were grouped in the same department and had far more frequent interaction, with the heavy duty cleaners actually assisting the maintenance employees on construction projects. Consequently, there was functional integration in *Harrah's*, which is completely nonexistent in this case.

comes to the parts room to get a part. I recognize that the parts room employees provide parts that are used by the mechanics and that there is, therefore, some functional integration between the mechanics and warehouse workers. However, I find that this factor is decidedly outweighed by the above-articulated factors militating against a community-of-interest finding.¹⁶

Maintenance Scheduler and Maintenance Clerk

When the community-of-interest factors are weighed with respect to the maintenance scheduler and clerk, these two positions have an insufficient community of interest with the undisputed positions in the maintenance department to require their inclusion in the unit. The maintenance scheduler and clerk have job duties and functions that are completely different from the job duties and functions of the undisputed positions in the maintenance department. The maintenance scheduler and clerk positions are clerical in nature, whereas the other maintenance department positions are mechanical in nature, and two very unrelated skill sets are required to perform these different functions. The scheduler and clerk work in an office setting, while the majority of the maintenance employees work on equipment and machinery in the production buildings. The scheduler and clerk are supervised by the Planner, who does not supervise any of the employees in the undisputed positions. There is no job interchange between either the scheduler and clerk and the other maintenance department positions. The method of pay for the scheduler and clerk is also different, as they are on a salary basis. The scheduler and clerk, further, are on a different vacation accrual schedule.

¹⁶ In its brief, the Employer states that it is seeking the inclusion of the “parts” warehouse workers. However, as discussed in the above factual section, the Employer presented evidence at the hearing regarding warehouse workers who work in the Garage Building parts room *and* in the West Plant. Consequently, while not completely clear, the record indicates that the Employer was seeking the inclusion of the two warehouse workers in the West Plant, as well as the four warehouse workers in the Garage Building, in the unit. In my analysis above, I have focused on the Garage Building parts room employees because they have some functional integration with the maintenance mechanics. As noted in the factual section, the West Plant warehouse workers hand out shipping-related supplies, and, thus, have no functional integration with the maintenance employees. Consequently, if the Employer is seeking to include the West Plant warehouse workers, this is a further factor militating against finding a community of interest because these workers have no contact or integration with the maintenance mechanics.

The scheduler's work-related contacts with rank-and-file maintenance mechanics and electricians are not frequent, taking place once a week when she checks with the supervisors and crews on job completion status on the weekends. Even with this contact, it is not clear that she necessarily needs to talk to the rank-and-file employees to determine job status, as she can also obtain this information from supervisors. The scheduler is administratively grouped under the Maintenance Team, and her assigning of work orders to maintenance crews does arguably have some functional integration with getting the maintenance work performed. However, I find that these two factors are clearly outweighed by the other factors previously discussed above which militate against a community-of-interest finding.

The maintenance clerk's contacts with maintenance mechanics and electricians are minimal; they turn in completed work orders to him, which is far from substantive interaction. The clerk is administratively grouped under the Maintenance Team and the clerical work he performs can, arguably, have some functional integration with the provision of maintenance work. However, as with the scheduler, I find that these two factors are clearly outweighed by the other factors previously discussed above which militate against a community-of-interest finding.¹⁷

VI. CONCLUSION

Based on the above, I find that the janitor, warehouse worker, maintenance scheduler, and maintenance clerk positions have an insufficient community of interest with the undisputed positions in the maintenance department to require their inclusion in the unit.¹⁸ I further find that

¹⁷ As noted at the outset of this decision, because I find that the maintenance scheduler and clerk have an insufficient community of interest with the other maintenance department employees, I do not reach the Petitioner's argument that they are office clerical employees.

¹⁸ At the end of its Brief, the Employer argues that excluding the four disputed classifications would leave those disputed employees in "limbo", being neither maintenance nor production employees, as, it asserts, the disputed employees share a lesser community of interest with the production employees. However, the Employer did not

the unit sought by Petitioner containing the seven undisputed positions—maintenance mechanics, leads, electricians, refrigeration technicians, electronic and instrumentation technicians, waste water operators, and waste water technicians—is an appropriate unit for collective bargaining, as it constitutes a separate maintenance department unit containing employees with the requisite community of interest.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local Union No. 494. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

address this concern at the hearing and did not develop any evidence in support. I decline to speculate whether the disputed employees also would be excluded from a production employee or any other appropriate unit.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **June 4, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing

through the Agency's website, www.nlr.gov,¹⁹ by mail, or by facsimile transmission at (414) 297-3880. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **June 11, 2010**. The request may be filed

¹⁹ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

electronically through E-Gov on the Agency's website, www.nlr.gov,²⁰ but may not be filed by facsimile.

Signed at Milwaukee, Wisconsin on 28th day of May 28, 2010.

/s/ Irving E. Gottschalk
Irving E. Gottschalk, Regional Director
National Labor Relations Board
Thirtieth Region
310 West Wisconsin Avenue, Suite 700W
Milwaukee, Wisconsin 53203

²⁰ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.